

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

WAYNE M. ALLEN,

Plaintiff,

v.

CIVIL ACTION NO. 2:07-00079

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

MEMORANDUM OPINION AND ORDER

By Standing Order entered August 1, 2006, and filed in this case on February 6, 2007, this action was referred to United States Magistrate Judge Mary E. Stanley for submission of proposed findings and recommendation. Magistrate Judge Stanley submitted her proposed findings and recommendation on September 19, 2007. (Doc. No. 14.) In that Proposed Findings and Recommendation, the magistrate judge recommended that this court find that plaintiff's complaint was filed in a timely manner, and that the court deny the defendant's motion to dismiss. (Id. at 3-4.)

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted ten days, plus three mailing days, in which to file any objections to Magistrate Judge Stanley's Findings and Recommendation. No party has filed objections within the requisite period, and the failure of any party to file such

objections constitutes a waiver of such party's right to a *de novo* review by this court. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985).

Having reviewed the Proposed Findings and Recommendation filed by the magistrate judge, the court adopts the findings and recommendations contained therein. Accordingly, the court hereby **FINDS** plaintiff's complaint (Doc. No. 2) to be timely for the reasons stated in the Proposed Findings and Recommendation. The court therefore **DENIES** defendant's motion to dismiss. (Doc. No. 8.)

The Clerk is directed to forward a copy of this Memorandum Opinion and Order to counsel of record.

It is **SO ORDERED** this 16th day of October, 2007.

ENTER:

A handwritten signature in cursive script, reading "David A. Faber", is written over a horizontal line.

David A. Faber
United States District Judge